

State of Colorado - Questions and Answers Pertaining to Fingerprinting and Criminal History Records Checks

NOTE: These FAQs were adopted from the NRC frequently asked questions document contained in a letter to Agreement States at:

<http://nrc-stp.ornl.gov/asletters/program/sp08005.pdf>

- 1. Information on how I would be required to respond to this notice when I receive it does not appear to be included with the implementing guidance? Will my response include sensitive information?**

For Colorado Licensees, the information on how to respond to the fingerprinting requirements is contained in your radioactive materials license and associated correspondence and guidance. The license conditions, license annex, cover letter, and supplemental guidance are not considered sensitive information.

Licensee responses to the fingerprinting requirements is considered sensitive information and should be marked appropriately with **Withhold From Public Disclosure Under Section 3.8.6 of the Regulations and 24-72-204, CRS (or 10 CFR 2.390 when corresponding with NRC)**

- 2. Why is the NRC/Agreement State now requiring fingerprinting and criminal history records checks as part of the Increased Controls trustworthiness and reliability requirements?**

The requirement for fingerprinting for unescorted access to radioactive materials quantities of concern was included in Section 652 of the Energy Policy Act of 2005. The NRC has determined that the requirement for fingerprinting should not wait for rulemaking and should be issued as Orders or legally binding requirements for both NRC and Agreement State licensees. The NRC therefore directed Agreement States to implement these requirements for Agreement State licensees as well.

- 3. Does a National Agency Check (NAC) satisfy the provisions of the fingerprinting requirements?**

If the NAC has been conducted within the past five calendar years and the employee can provide documentation of favorable results to the licensee's T&R Official, then this would satisfy the provisions of the new IC requirements.

- 4. Can the Human Resources department be designated as the licensee's Trustworthiness and Reliability (T&R) Officials to review criminal history records? Do they have to be fingerprinted to be able to review and approve others?**

The requirements for fingerprinting and criminal history records should be incorporated into the licensee's current program of reviewing and approving background information of its employees. The duties of a T&R Official can be delegated to the Human Resources department or any other appropriate department as long as the individuals involved in the determining of an employee's trustworthiness and reliability have been determined themselves to be trustworthy and reliable by the licensee. T&R Official shall only be fingerprinted if his/her duties require unescorted access to radioactive materials quantities of concern

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5. What is a Trustworthiness and Reliability (T&R) Official? Who can be a T&R Official?

A T&R Official is an individual who the licensee determines to be trustworthy and reliable, based on the three minimum requirements for background checks of the Increased Controls (i.e., employment history, education, and personal references). Fingerprinting and criminal history checks are only needed if the T&R Official has, or will have, unescorted access to radioactive material quantities of concern.

6. Can I take my own fingerprints or can someone else at my company fingerprint me?

Licensees may take their own employee fingerprints as discussed in the supplemental question #S3 below. Licensees should consider having their employee fingerprints taken by local law enforcement (or a private entity authorized to take fingerprints) because an authorized Official must certify the identity of the person being fingerprinted. Additionally, fingerprints which are unreadable will not be accepted by the NRC/FBI and will be returned to licensees for resubmission. This may result in delays or additional fees.

7. Where can I have my fingerprints taken?

Most local law enforcement facilities can take your fingerprints.

8. I was only provided a few fingerprint cards, where can I get more?

You can request more fingerprint cards by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by calling (301) 415-5877, or by e-mail to forms@nrc.gov.

9. What information do I need to include on the card?

Incomplete fingerprint cards will not be processed and will be returned to the licensee. Licensees need to include the following information on each card:

- a. Last name, first name, middle name
- b. Signature of person being fingerprinted
- c. Residence of person being fingerprinted
- d. Date
- e. Signature of official taking the fingerprints
- f. Employer (licensee name) and address of person being fingerprinted
- g. Reason for being fingerprinted
- h. Aliases
- i. Citizenship
- j. Social security number and any of the other corresponding numbers requested on the card if applicable
- k. Date of birth
- l. Place of birth

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- m. Sex
- n. Race
- o. Height
- p. Weight
- q. Eye color
- r. Hair color
- i. Your Colorado radioactive material license number preceded by "CO" should be written in the "Your NO. OCA" box near the middle/top of fingerprinting form FD-258.

11. I was able to get more fingerprint cards from my local law enforcement agency, can I use those instead?

No, because of problems that have been experienced in the past with some of the cards.

12. How can I make sure that my fingerprints are classifiable (readable)?

There are instructions on the back of each fingerprint card on how to achieve classifiable fingerprints. Individuals that submit fingerprint cards that are not classifiable will have to submit new cards. Reliance on trained personnel at local law enforcement offices may also help ensure that fingerprints are classifiable.

13. Who do I send my fingerprints to?

A completed fingerprint card, along with the T&R Official Certification, and evidence of payment should be sent to:

Director, Division of Facilities and Security
U.S. NRC
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738
ATTN: Criminal History Program, Mail Stop T-6E46

14. Is there a fee associated with the NRC processing the fingerprints?

The current NRC fee to process each fingerprint card is \$36.00 per card. Additional fees may be charged by the entity taking the fingerprints. At this time the Colorado Department of Public Health and Environment will not be assessing additional fees associated with fingerprinting requirements, nor will the Department be directly involved in the fingerprinting process.

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15. What method of payment does the NRC accept?

The NRC accepts electronic payments through <http://www.pay.gov>. Please refer to the instructions in the Department correspondence transmitting the fingerprinting requirements and other supplemental information for details on how to pay electronically. Other methods of payment may also be available – refer to Enclosure 2, of the Departments correspondence dated May 30, 2008. [Note – the State of Colorado Radiation Management Program will not be directly involved in the fingerprinting process or FBI background checks, and will not collect fees specific to these activities. Therefore, all fee payments for fingerprinting processing and FBI checks will be made through the NRC as specified above.]

16. My facility is currently not implementing the Increased Controls requirements because it does not possess radioactive materials quantities of concern. Can we implement the fingerprinting requirements?

No. The requirements of Section 149 of the Atomic Energy Act only apply to facilities that have radioactive materials in quantities of concern, as identified by the Commission.

17. If I do not have the quantities of material in Table 1, in aggregate or individually, do I need to implement the fingerprinting requirements.?

No. Implementation is only required if you possess radioactive material quantities of concern (i.e., at or above the thresholds of Table 1) individually or in aggregate. You may request that your license be amended to lower your possession limits below the Table 1 quantity so that requirements are not applicable. If you anticipate that you will exceed the Table 1 quantities, in aggregate or individually, you must implement the Increased Controls requirements and fingerprinting requirements prior to actual possession of the material.

[NOTE: The State of Colorado Radiation Management Program may determine that the IC and fingerprinting requirements be retained in some licensees even if the licensee does not possess radioactive materials exceeding Table 1 quantities. These licensees will be required to implement the IC requirements when quantities of materials exceeding Table 1 are exceeded. These licenses will be handled on a case-by-case basis.]

18. When are licensees required to submit fingerprints to the NRC?

Licensees are required to fingerprint and review the criminal history results for all individuals who currently have, or will require, unescorted access to radioactive materials quantities of concern to the NRC within 180 days after the license containing the fingerprinting requirements is issued.

19. Will guidance be provided on how to determine trustworthiness and reliability based on FBI identification and criminal history records checks?

Guidance is included with the correspondence accompanying the amended license; however, it will ultimately be the decision of the licensee's T&R Official to determine whether an individual should be granted unescorted access to the radioactive material, based on the

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results of the criminal records history check, and the other trustworthiness and reliability requirements of the Increased Controls.

20. Can employees continue to have unescorted access until they are approved or denied based on the results of their fingerprints?

During the implementation period (i.e., up to 180 days after the license containing the fingerprinting requirements is issued) employees who have unescorted access at the time the requirement is issued may continue to have unescorted access in accordance with the requirements of the Increased Controls until they are fingerprinted and continued access is approved or denied based on the review of their FBI identification and criminal history record. After the expiration of the implementation period (180 days after issuance of the license containing the fingerprinting requirements), no one may have unescorted access until they are fingerprinted and receive approval from the T&R Official based upon a review of their FBI identification and criminal history record. Individuals hired on or after the date of the amended license mandating the Increased Controls Fingerprinting requirements may not be granted unescorted access under the "old" or prior IC requirements unless they are fingerprinted and results and review of their FBI criminal history record is complete.

21. My fingerprints have been returned several times as unclassifiable, can I get an extension to submit my fingerprints?

On a rare case that a licensee needs additional time to implement the fingerprinting requirements beyond the 180-day implementation time, the Department will consider granting extensions only on a case by case basis. Licensees must take the appropriate actions to minimize any potential impacts in delays from receiving the criminal history results from the NRC. In a rare case that an extension is needed, the request must be date-stamped before the deadline to implement the requirements and must include the licensee's justification as to why additional time is needed beyond the 180-day implementation period and the appropriate compensatory actions that will be implemented until the fingerprints are processed.

22. Our radioactive material is in a room where several people have unescorted access, even though they do not work directly with the radioactive material (i.e., custodial staff), do they need to be fingerprinted?

Yes. Other personnel (both licensee and non-licensee) that have job duties that require unescorted access to the room where the materials are used or stored must be fingerprinted and determined to be trustworthy and reliable by the T&R Official based on the evaluation of the individual's criminal history record and the other trustworthiness and reliability requirements of the Increased Controls.

23. What does unescorted access to the material mean?

Unescorted access to the material means that an individual can exert some physical control over the material or device while they are alone.

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24. If I decide that based on a federal criminal records history check one of my employees previously granted unescorted access should not have unescorted access to radioactive material what actions can I take?

The licensee is ultimately responsible to determine the best course of action.

25. Does the denial of unescorted access create legal liability for the licensee?

The NRC and Agreement States acknowledge that employer liability potentially exists through the process for determining trustworthiness and reliability, just as employer liability potentially exists throughout the hiring process. A finding that results in denying someone employment may be actionable on the part of the employee/employee candidate, and this is no different.

26. At this time our Human Resources department make the trustworthy and reliability determination for unescorted access. Since they make this decision, do they need to be fingerprinted?

Only individuals that have unescorted access to radioactive materials quantities of concern are required to be fingerprinted. Therefore, individuals that make trustworthy and reliability determinations that do not have unescorted access do not need to be fingerprinted. However, they are still required to be determined trustworthy and reliable per the Increased Control requirements contained in Annex A of your radioactive materials license .

27. How far back do the criminal history record checks go? Can the NRC provide guidance on what types of information could be considered when granting unescorted access?

The criminal history records check provides information on all arrests since the individual's eighteenth birthday. Guidance on criminal offenses that could be considered is included with the correspondence and guidance accompanying the license. However, the list of offenses is not inclusive. There may be additional offenses not listed in the guidance that the licensee wants to consider as part of unescorted access approval process. It is the licensee's ultimate business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination.

28. Is there a process to request an exemption from fingerprinting? Do employees that have been fingerprinted in the past need to be fingerprinted again?

Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49

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CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program¹ within the last five (5) calendar years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation²). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

¹ The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S. - Canada and U.S. - Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

² This documentation must allow the T&R Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

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29. Is fingerprinting meant to replace the trustworthiness and reliability determination?

No, fingerprinting is only one component of the trustworthiness and reliability determination. A trustworthiness and reliability determination should be based, at a minimum, by verifying employment history, education history, personal references and a federal criminal history check (initiated by submission of fingerprints). All four of these components need to be considered when making a T&R determination.

30. How will compliance with the fingerprinting component be verified?

Compliance will be verified at the time the licensee's trustworthiness and reliability program is inspected by the Department.

31. Is there financial aid or funding available to assist in the implementation of the fingerprinting requirements? Will the licensees be compensated in any way?

Neither the NRC nor the Colorado Department of Public Health and Environment Radiation Management Unit will provide financial aid and there is no funding available to assist licensees in the implementation of the fingerprinting requirements.

32. Will there be a reevaluation period?

At the moment there is no reevaluation period. The reevaluation of criminal history records will be addressed during the NRC's rulemaking process which may result in changes to the IC requirements in Colorado.

33. The fingerprinting requirements specifies that the licensee shall provide under oath or affirmation a certification that the T&R Official is deemed trustworthy and reliable. What does it mean to submit documents to the Department "under oath or affirmation"?

The requirement to submit documents to the Department under oath or affirmation may be satisfied by using a notary public to authenticate oaths or affirmations and to certify that the information provided is correct and true. An alternate method for complying with the oath or affirmation requirement is presented in the United States Code, Title 28, Section 1746 (28 USC 1746). This method allows use of the following unsworn declaration to satisfy the oath or affirmation requirement:

I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct.

Executed on [date] [Signature]

When applying this declaration, it must be used verbatim. Licensing documents accompanied by this unsworn declaration satisfy the requirement that such documents be submitted under oath or affirmation.

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The Department has posted on its website an example T&R Official certification letter for use by licensees.

SUPPLEMENTAL QUESTIONS AND ANSWERS

S1. What is the process for appointing a Trustworthiness and Reliability (T&R) Official if they require unescorted access to radioactive materials?

Increased Control requirement 1.e states:

The licensee shall establish, maintain, and certify under oath and affirmation at least one Trustworthy and Reliability Official responsible for determining the trustworthiness and reliability of other individuals requiring unescorted access to radioactive materials quantities of concern. The Trustworthy and Reliability Official shall be determined as Trustworthy and Reliable in accordance with the requirements of IC 1.

The Departments correspondence dated May 30, 2008 also states the following:

By August 28, 2008 [90 days] the licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable by the licensee. The process of certification of the T&R official is described in the enclosures to this correspondence.

The Licensee must also consider the three minimum requirements of the Increased Controls (i.e. employment history, education and, personal references) in approving a T&R official.

The procedure for appointing a T&R Official who requires unescorted access to radioactive material is the same as that other individuals having unescorted access with the exception of the certification portion required only for the T&R Official.

The results and information from the FBI records check should be reviewed by someone other than the nominated T&R Official and should be the individual who will be submitting the certification under oath and affirmation. The reviewer would preferably be the same person who initially approved the T&R Official for the original Increased Controls requirements, but may be the custodian or initiator of the license.

If the nominated T&R Official is deemed trustworthy and reliable by the licensee, the licensee must submit to the Department, under oath or affirmation, a certification that the named T&R Official is deemed trustworthy and reliable as required by the Increased Controls contained in Annex A of your license.

The requirement to submit documents to the Department under oath or affirmation is discussed above in a prior Q&A and in the Department correspondence dated May 30, 2008. The initial certification must be submitted to the Department within **ninety (90) days** of the date of the license amendment. In addition, a copy of this certification must be submitted with all subsequent fingerprints submitted to the NRC. Additionally, each

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time a new T&R Official is appointed, a new certification must be provided with the next submittal of fingerprints to the NRC.

S2. Can additional employees (e.g., new hires or existing employees changing positions within the company who did NOT have unescorted access prior to the date of the Amended license) be granted unescorted access to radioactive materials quantities of concern prior to the establishment of a fingerprinting program and certification that the Trustworthiness and Reliability Official is deemed trustworthy and reliable?

No. Prior to being granted unescorted access to material, all additional employees the licensee identifies after the date of the license amendment as requiring unescorted access, must be determined to be trustworthy and reliable based upon the requirements of the Increased Controls and the review of their FBI identification and criminal history records. The correspondence accompanying the amended license also requires that within 90 days of the date of the amended license that licensees establish a fingerprinting program and provide under oath or affirmation a certification that the Trustworthiness and Reliability Official (T&R Official) is deemed trustworthy and reliable by the licensee.

Only after the T&R Official has been certified to be trustworthy and reliable, can the T&R Official make trustworthiness and reliability determinations for any employee who requires unescorted access after the date of the amended license. Each submittal of fingerprints to the NRC must be accompanied with a copy of the current T&R Official certification. See prior FAQs for guidance on appointing and certifying a Trustworthiness and Reliability Official.

S3. Who can perform the task of fingerprinting for my employees?

Licensees must have their fingerprints taken by an authorized official, such as a representative from a local law enforcement agency. However, an authorized official, for the purposes of taking fingerprints, could be available through private entities, contractors, or an established on-site fingerprinting program. If a licensee has fingerprints taken at a facility other than that of a recognized Federal, State, or local law enforcement agency, the licensee should ensure that the prints are taken legibly and match the identity of the individual named on the fingerprint card.

In these cases, the individual taking fingerprints should at a minimum:

- 1) Be trained to take fingerprints (*Training to take fingerprints is offered through the FBI, or may be available from local law enforcement agencies and some professional associations.*);
- 2) Verify the identity of the individual being fingerprinted by checking a government-issued picture identification (*e.g. a passport or driver's license*) and that the name on the card matches the government issued identification.
- 3) Sign the block on the fingerprint card labeled "SIGNATURE OF OFFICIAL TAKING THE FINGERPRINTS."

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The licensee must ensure that complete and accurate information is provided in accordance with 10 CFR 30.9. available at:

<http://www.nrc.gov/reading-rm/doc-collections/cfr/part030/part030-0009.html>

For additional related information, also see prior Q&A's.

S4. How is the initial trustworthiness and reliability (T&R) determination and certification made (based on fingerprints and a criminal history record check) if the individual to be designated as the T&R official is also the license custodian, initiator, or applicant, and has unescorted access?

In most cases, there will be no one within an organization or company, above the custodian or initiator of a license ("licensee"), previously determined trustworthy and reliable for purposes of evaluating background check and criminal history information and making the initial determination as to whether a designated T&R official is trustworthy and reliable.

Within the licensing process, there are a series of screening criteria used by the reviewer to assess information regarding the applicant. The purpose of the screening criteria is to provide reasonable assurance that radioactive material will be used as intended. The fact that a regulatory authority, using established processes, has authorized the individual applicant to possess radioactive material quantities of concern provides the basis for allowing the applicant to appoint T&R officials.

Where the licensee or applicant requires unescorted access and intends to designate himself or herself as the T&R Official, the licensee or applicant should submit fingerprints to the NRC and indicate that the results of the criminal history record check be returned directly to him or her, specifying the appropriate address. Once the criminal history information has been received by the licensee or applicant, the results must be reviewed and filed by the licensee or applicant and made available to Department inspectors for ensuring compliance with the fingerprinting requirements.

The licensee or applicant must then submit a letter to the Department certifying under oath and affirmation that he or she is the initial T&R official for the license. The licensee or applicant can then make T&R determinations for other employees who require unescorted access subject to the fingerprinting requirements, or designate other T&R officials for the purpose of reviewing criminal history information.

A letter certifying a T&R official under oath and affirmation must accompany each additional submission of fingerprints to the NRC. This letter must specify the name(s) and address of the T&R official(s) who will review the criminal history information from the FBI for a given lot of fingerprints.

S5. Must the certification for the Trustworthiness and Reliability (T&R) Official required by IC 1.e specifically identify the T&R Official by name, or can it apply

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generically to the position within the company that is designated as the T&R Official (e.g., the Security Officer or a Human Resources position)?

The certification that the T&R Official is deemed trustworthy and reliable must specifically identify the name or names of the individual(s) designated as the T&R Official(s). This applies to the initial certification required by IC 1.e, and the Department correspondence dated May 30, 2008 and the certification provided with each fingerprint submission discussed in the Departments correspondence and attachments dated May 30, 2008.

If the licensee has designated multiple individuals to serve as the T&R Official, the licensee may either provide separate certifications for each T&R Official, or provide a single certification that identifies each of the T&R Officials by name.

The certification provided with each fingerprint submission need only identify the T&R Official to whom the licensee specifies the results should be returned (see the enclosures to the Department correspondence dated May 30, 2008). A copy of the initial certification is acceptable if it includes the name of the specified T&R Official. If the name of the T&R Official changes, a new certification must be prepared that includes the name of the new T&R Official and be provided the next time fingerprints are submitted.